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Attorney for Margaret B. McGimsey  
Trust, Bruce McGimsey, Jerry  
McGimsey, Sharon McGimsey and  
Johnny Clark

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re: )  
USA COMMERCIAL MORTGAGE COMPANY, )  
Debtor. )  
USA CAPITAL REALTY ADVISORS, LLC, )  
Debtor. )  
USA CAPITAL DIVERSIFIED TRUST DEED )  
FUND, LLC, )  
Debtor. )  
USA CAPITAL FIRST TRUST DEED )  
FUND, LLC, )  
Debtor. )  
USA SECURITIES, LLC, )  
Debtor. )

Case No. BK-S-06-10725 LBR  
Case No. BK-S-06-10726 LBR  
Case No. BK-S-06-10727 LBR  
Case No. BK-S-06-10728 LBR  
Case No. BK-S-06-10729 LBR

Chapter 11

RESPONSE TO OMNIBUS  
OBJECTION OF THE OFFICIAL  
COMMITTEE OF EQUITY  
SECURITY HOLDERS OF USA  
CAPITAL DIVERSIFIED TRUST  
DEED FUND CLAIMS ON  
EQUITY MISFILED AS CREDITOR  
CLAIMS BY BRUCE McGIMSEY

Date: 01/03/07  
Time: 9:30 a.m.

Affects: )  
☐ All Debtors )  
☐ USA Commercial Mortgage Company )  
☐ USA Securities, LLC )  
☐ USA Capital Realty Advisors, LLC )  
☒ USA Capital Diversified Trust Deed )  
Fund, LLC )  
☐ USA First Trust Deed Fund, LLC )

COMES NOW Bruce McGimsey, by and through his attorney, William L. McGimsey, Esq.,  
and in response to the objection to the Creditor's Claim filed herein by the Official Committee of

LAW OFFICES  
WILLIAM L. McGIMSEY  
A PROFESSIONAL CORPORATION  
601 EAST CHARLESTON BOULEVARD  
LAS VEGAS, NEVADA 89104

1 Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC, respectfully shows as  
2 follows.

3 The objection is apparently based on two grounds. The first is the fact that the Creditor's  
4 claim is allegedly duplicative of the Proof of Interest by this Creditor and Interest Holder. In fact, this  
5 Creditor has filed a Proof of Interest because this Creditor is in fact an Interest Holder. However, in  
6 addition, this Creditor is an unsecured creditor and has therefore filed a Proof of Claim as an  
7 unsecured creditor.

8 This Creditor purchased his interest in the Debtor pursuant to Subscription Agreements, all  
9 of which provided that the terms of the agreement were as set forth in the prospectus of USA Capital  
10 Diversified Trust Deed Fund, LLC. In that prospectus, the Debtor contracted and agreed that all  
11 loans would be secured by first deeds of trust that encumber the real property and that the maximum  
12 loan to value ratio would be 75% for residential subdivisions and commercial property and 60% for  
13 unimproved loans. The agreement also provided that no loans would be made to the Debtor's  
14 manager or any of its affiliates. These provisions in the case of USA Capital Diversified Trust Deed  
15 Fund, LLC were violated in that loans were made to affiliates which were totally unsecured. Thus,  
16 this Creditor believes he can prove that the Debtor has been guilty of breach of its contract and has  
17 been defrauded by the Debtor giving rise to this Creditor's claim.

18 The objecting creditor has cited the case of *In re Betacom of Phoenix, Inc.*, 240 F.3d 823,  
19 829 (9<sup>th</sup> Cir. 2001), for the proposition that this Creditor's claim must be subordinated because it  
20 arose out of the purchase and sale of a security. In the *Betacom* case, the court did indicate that under  
21 certain circumstances, a creditor's claim which arose out of the purchase and sale of a security or  
22 equity position in the debtor should be subordinated to other more conventional creditors' claims  
23 which did not arise out of the purchase of the sale of an equity interest in the debtor. However, the  
24 court did not make a blanket ruling that such creditors' claims as the one in question here would be  
25 automatically subordinated to all other creditors' claims but rather would be subordinated to creditors  
26 who extended credit to the debtor on the basis of the equity in the debtor.

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1 In any event, even if this claim should be subordinated to other creditors' claims that is not  
2 grounds for a denial of the claim.

3 Respectfully submitted,

4  
5 s// William L. McGimsey  
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